

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SHINSHO AMERICAN CORPORATION

Plaintiff,

vs.

HYQUALITY ALLOYS, LLC

Defendant.

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CIVIL ACTION NO. 4:20-cv-00577

JURY DEMAND

**SHINSHO AMERICAN CORPORATION'S STATUS REPORT
TO THE COURT REGARDING MOTION FOR CONTEMPT
AND REQUEST FOR SHOW CAUSE HEARING**

On March 16, 2021, Shinsho American Corporation ("Shinsho") filed an Emergency Motion for Contempt and Request for a Show Cause Hearing (Dkt. 41) in connection with violations by HyQuality Allows, LLC ("HQA") of the Agreed Order Granting Preliminary Injunction ("PI Order") (Dkt. 21). The Court held a telephone conference with the parties on March 19, 2021 to address the issues raised in Shinsho's Motion. During the conference, the Court instructed HQA's counsel that HQA was required to comply with the Court's PI Order, and took Shinsho's request for a show cause hearing under advisement. The Court also instructed the parties to file a report on the status of HQA's compliance this week. Shinsho is filing this status report in accordance with the Court's directive.

STATUS REPORT

Payments Still Due Shinsho

Under the terms of the PI Order, HQA is prohibited from removing any Subject Bars from the facility unless HQA has either: (i) paid Shinsho in advance for the bars prior to shipment, or

(ii) Shinsho has, in advance of shipment, approved a sale of the bars to a third-party customer who has agreed in writing to pay Shinsho directly for the bars within 30 days of receipt.

As documented in the Motion for Contempt, HQA violated the PI Order on multiple occasions since January 1, 2021 by shipping Subject Bars without paying Shinsho for the bars in advance or providing the required paperwork to document the shipments. At the hearing last week, Shinsho did not know the full amount owed but estimated that from what it knew at the time, the amount was at least \$100,000, and likely much more.

After the hearing on Friday, March 19, 2021, HQA wired Shinsho \$62,000. Later that evening, HQA also sent Shinsho some, but not all, of the missing paperwork.

From the paperwork, Shinsho calculated that it was still owed at least \$119,173.05 for these identified shipments. The figure, however, was low because there are some shipments that still have not been accounted for by HQA, as addressed in the section below. Nevertheless, Shinsho informed HQA that they needed to immediately pay Shinsho at least \$119,173.05 to comply with the PI Order.

On Thursday, March 25, 2021, HQA issued a \$20,000 wire to Shinsho that HQA's counsel characterized as a "good faith" payment. Later that day, HQA, through email from counsel, informed Shinsho that the actual amount due for these shipments was \$134,430.89, which means that after accounting for the \$20,000 payment, **HQA admits the balance due Shinsho for these shipments is \$114,430.89.**

As of the filing of this Status Report, HQA has not paid Shinsho this amount as required by the PI Order. Instead, the email from HQA's counsel indicated that HQA would pay Shinsho for these transactions no later than April 8, 2021. As a result, HQA is still in violation of the PI Order notwithstanding the hearing with the Court last week. As a result, Shinsho respectfully asks

the Court to schedule a show cause hearing as soon as possible as requested in Shinsho's Motion for Contempt.

Missing Documentation

After the telephone conference with the Court last week, Shinsho, through counsel, provided HQA with a list, attached as Exhibit A (the "Missing Item List"). The Missing Item List identifies a number of shipments since January 1, 2021 that may contain Subject Bar, but which Shinsho could not verify based on the lack of paperwork provided by HQA. Shinsho asked HQA to provide sufficient documentation to identify these shipments.

The vast majority, if not all, of the items on the Missing Item List remain unresolved because to date HQA has not provided the requested paperwork. On March 25, 2021, however, HQA's counsel stated in an email that "in the spirit of cooperation, [HQA] can gather shipping documents or other documents that would identify those shipments as HyQuality-only bars and, after redacting certain information, produce them to Shinsho... We will endeavor to produce those and are committed to continuing to work with you through these issues."

Nevertheless, a number of these disputed shipments appear to contain Subject Bar governed by the PI Order. As a result, Shinsho continues to believe that HQA is in violation of the PI Order for not providing the paperwork and/or payments, if required, in connection with any such shipments.

Respectfully submitted,

/s/ Charles Hampton

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served to counsel of record via the Court's ECF system on March 25, 2021.

/s/ Charles Hampton

Charles Hampton